

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

JENNIFER ROBERTS, individually and on	)	
behalf of all others similarly situated,	)	
	)	
Plaintiff,	)	Case No. 4:15-CV-1368-CDP
	)	
v.	)	
	)	
MEDCO HEALTH SOLUTIONS, INC., and	)	
ACCREDITO HEALTH GROUP, INC.,	)	
	)	
Defendants.	)	

**DEFENDANTS MEDCO HEALTH SOLUTIONS, INC. AND ACCREDITO HEALTH  
GROUP, INC.'S MOTION FOR SUMMARY JUDGMENT**

Defendants Medco Health Solutions, Inc. (“Medco”) and Accredo Health Group, Inc. (“Accredo”) (collectively “Defendants”), pursuant to Fed. R. Civ. P. 56 and L.R. 7-4.01, hereby jointly submit their motion for summary judgment as to all claims raised by Plaintiff Jennifer Roberts (“Plaintiff”)<sup>1</sup> in the Amended Complaint (Dkt # 40). In support of this motion, Defendants state as follows:

1. Summary judgment should be granted on all claims raised by Plaintiff in the Amended Complaint under the Telephone Consumer Protection Act (“TCPA”). The calls at issue in this lawsuit involved a situation affecting the treatment or the health of Medco and Accredo patients. Those calls cannot give rise to liability under the TCPA because each call falls under the broad emergency purposes exception created by Congress when the statute was enacted. *See* 47 U.S.C. § 227 (b)(1)(iii). For that reason, Defendants are each entitled to judgment as a matter of law on Plaintiff’s TCPA claim.

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<sup>1</sup> Per the Court’s order, this case is currently limited to only the individual claims raised by Plaintiff. *See* Dkt. # 35.

2. In addition, as a separate and independent ground, Defendants are also entitled to summary judgment on Plaintiff's TCPA claim because Defendants relied in good faith on consent provided by their patients, who provided the phone number at issue and reconfirmed the number on multiple occasions, including *during* the time period Plaintiff alleges that she received Defendants' calls.

3. Finally, several independent reasons, summary judgment should be granted in favor of Defendants on Plaintiff's newly added claim under a provision of Missouri's Merchandising Practices Act ("MPA") related to telemarketing. The undisputed evidence demonstrates that Defendants are not telemarketers, that the healthcare treatment calls do not constitute telemarketing, that Plaintiff answered only two calls while most of the calls did not ring, that Plaintiff never made a request to stop calling, and most apparently that Plaintiff did not suffer any actual "loss or harm." Each of these facts represents an independent basis that is sufficient to grant summary judgment in favor of Defendants on Plaintiff's MPA claim.

4. The grounds for summary judgment are more fully set forth in Defendants' Memorandum in Support of Their Motion for Summary Judgment, filed contemporaneously herewith and incorporated herein by reference.

5. Pursuant to L.R. 7-4.01(E), Defendants have also filed contemporaneously herewith a Statement of Uncontroverted Material Facts in support of this motion, incorporated herein by reference.

6. Defendants respectfully request oral argument on their Motion for Summary Judgment, to occur at a time and location that is convenient for the Court.

WHEREFORE, Defendants respectfully request that this Court enter an Order granting summary judgment in favor of Defendants on all of Plaintiff's claims.

Dated: March 29, 2016

Respectfully submitted,

HUSCH BLACKWELL LLP

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 29th day of March, 2016, the foregoing was filed electronically with the Clerk of Court, to be served by operation of the Court's electronic filing system upon all counsel of record.

/s/ Christopher A. Smith